



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01345/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 6th November 2018**

**Decision & Reasons
Promulgated
On 29th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**AA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Smith, Counsel instructed by South West London Law Centre

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Iran of Kurdish ethnicity, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 15th January 2018 to refuse his application for asylum and humanitarian protection. First-tier Tribunal Judge McIntosh dismissed the appeal in a decision promulgated on 14th August 2018.
2. The background to this appeal is that the Appellant claims that his father worked illegally transporting goods over the border between Iran and Iraq

and that he occasionally helped his father. He claims that his father was well-known to smugglers and the authorities for his illegal activities. He claims that in late 2015 two men came to the Appellant's home seeking his father's assistance to cross the border. The Appellant came to know that these two men were members of KDPI who had been delivering leaflets promoting KDPI. As they crossed the border they were shot at by the authorities and they returned fire with the weapons they had in their possession. The Appellant says that he believes that one of the Pasdar (Revolutionary Guards) was injured by the gunfire. The Appellant's father escaped the scene and returned home. The Appellant claims that, when he returned home, his father advised the Appellant and his mother that they were to leave the house immediately. The Appellant and his parents left Iran travelled to Iraq. The Appellant travelled onwards on his own on the basis that his parents were to follow him. The Appellant arrived in the UK on 4th December 2015.

3. The First-tier Tribunal Judge noted that the Respondent had accepted that the Appellant is Iranian. At paragraph 34 the judge found that the Appellant is a credible and consistent witness. The judge noted that, apart from being aware that his father smuggled goods across the border, the Appellant was not privy to the details of who he smuggled for or where he delivered the goods. The judge accepted that the Appellant was aware that his father assisted two men to the border and this incident involved an exchange of gunfire between the KDPI and the Iranian authorities. The judge took into account the expert report provided and found it credible that the Appellant would not be informed of any details of the journey his father was going to undertake with the two men and the judge found it credible that, if his father were so minded, that he would assist the two as KDPI members without fearing this is a greater risk to him and his family. The judge also found the Appellant's narrative of the background to his travelling to Europe to be credible and consistent with the expert report.
4. At paragraph 36 the judge said; "the issue I find to be determined by me is whether upon return to Iran the Appellant would in fact attract adverse attention from the Iranian authority." The judge noted that the Appellant asserts that his father feared for his life and that of his family and therefore left Iran immediately because he believed he had been identified. The judge accepted that there is a risk that if the Appellant's father is known and he has been identified to the authorities the Appellant would upon return be identified as the son of a smuggler and specifically the smuggler who was involved in the crossfire involving the two KDPI members.
5. However the judge went on to find at paragraph 36;

"I have no evidence that the two KDPI members were captured or identified. I have no evidence that they were aware of the Appellant's father's details and certainly no evidence that they knew the Appellant. I also have no evidence that informants had provided details of the Appellant and his father to the authorities. The expert report simply speculates on the point and has no evidential value as to whether

informants would have identified the Appellant and his father to the authorities.”

6. The judge also found at paragraph 41 that there is “little evidence of the Appellant’s father’s involvement with the KDPI”.
7. There are three grounds of appeal. The first ground contends that, having found that the Appellant is a credible and consistent witness, and having accepted his account that his father had assisted two KDPI members to the border and that there was an exchange of fire there, the judge failed to give any or adequate reasons for rejecting that the Appellant would be at risk on return as a result of his father’s actions. It is contended that the judge’s findings are at odds with her finding that the Appellant had given a credible account which included that his father had assisted the two KDPI members, that there had been an exchange of fire and that his father had fled immediately because he believed that he had been identified. In my view this is linked with the second ground which contends that the judge failed to give adequate reasons for rejecting the country expert’s evidence that it is plausible that the Appellant’s father was identified by informants and came to the attention of the authorities is simply speculation.
8. I note Mr Kandola’s submission that the finding at paragraph 36 was open to the judge even though she had accepted the core of the Appellant’s claim. He submitted that it was open to the judge to find that there was no evidence that the authorities had identified the Appellant’s father and, if he had not been identified, then there is no risk to the Appellant.
9. However in my view the judge did make a material error in her conclusions in relation to this matter. The judge recorded at paragraph 16 the Appellant’s claim that when his father returned to the family home he advised the Appellant and his mother that they were to leave the house immediately. At paragraph 20 the Appellant’s evidence that his father is well-known within his community as a smuggler is recorded and his evidence that there were people within the community who were informers. The Appellant’s evidence was that, as his father left their home urgently, he was aware of the risk that as members of the KDPI the authorities would want to detain anyone involved in assisting the KDPI. It is also recorded at paragraph 21 that the Appellant said that his father informed him after the shooting that they were wanted by the government. At paragraph 34 the judge found the Appellant to be a credible and consistent witness. The judge has not specifically rejected any aspect of the Appellant’s claim or the Appellant’s evidence.
10. Further, at paragraph 22 of his report, the expert, Dr Engeland, said;
“... the discussion on identification of Mr [A]’s father could perhaps be irrelevant: most of the time the Iranian forces chase any individual or group of individuals they see in the mountains, and this without prior identification. It is therefore possible that the authorities gave chase to the three individuals without identifying them because of the darkness. In the case at hand, it is also possible that the authorities

had been tipped off by a local spy or informant. The authorities have recruited Kurds as ‘border guards’ or ‘village guards’ to help them monitor the situation, spy on other Kurds and report on secessionist groups and smugglers. If such is the case, the authorities would have known of the identity of the smuggler, Mr [A]’s father, and of the two travellers. It is my opinion that it is plausible someone informed the authorities of Mr [A]’s father passage through the mountains with two KDPI members: the authorities have stepped up their efforts in the area since the 2017 terrorist attacks against the Iranian Parliament and the Khomeini Mausoleum: it has been reported that these attacks could have been carried out by Iranian Kurds in the name of ISIS. It has also emerged that ISIS is trying to recruit among Iranian Kurds. This has led Iranian authorities to recruit more of border guards and village guards. This could explain how Mr [A]’s father’s identity and decision to guide two KDPI members through the mountains came to be known by the authorities.”

11. The judge said at paragraph 36 that she had no evidence as to how the Appellant and his father would have been identified to the authorities. However she failed to give any or adequate reasons for rejecting the Appellant’s evidence on this point which she found to be credible and rejecting the expert’s opinion which is consistent with the Appellant’s evidence.
12. I find that the judge did make a material error of law at paragraph 36 in her treatment of the Appellant’s evidence and the expert’s evidence and failed to give adequate reasons for rejecting this evidence. This is a material error of law.
13. There is no challenge to the judge’s findings of fact. And as this is a discrete finding which goes to risk on return I can set the finding aside and remake the decision. Mr Kandola and Miss Smith agreed that I could remake the decision on the basis of the evidence before me.

Remaking the Decision

14. As set out above, the judge found at paragraph 34 that the Appellant is a credible and consistent witness. The Appellant's evidence is that his father was known as a smuggler, his father told him that they were wanted by the government and there were people within the community who were informers. The expert concludes that the Appellant’s evidence on this matter is plausible and that it is plausible that the authorities would have been informed of the Appellant’s father’s actions by spies. I also consider the judge’s conclusion which has not been challenged at paragraph 43 that the objective evidence shows that if the Appellant is suspected of involvement with the KDPI he is at risk on return. I also note the findings in **SSH and HR (illegal exit: failed asylum seekers) Iran CG [2016] UKUT 00308 (IAC)**.

15. I am satisfied, based on these findings that, if the Appellant were to return to Iran, he is likely to be identified as the son of his father who is wanted by the authorities. Accordingly, I am satisfied, based on the findings made by the First-tier Tribunal Judge, that the Appellant has established that there is a real risk that he has a well-founded fear of persecution upon return to Iran on the basis of his imputed political opinion.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and I set it aside.

I remake the decision by allowing the Appellant's appeal.

An anonymity direction is made.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 24th November 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT FEE AWARD

No fee is paid or payable therefore I make no fee award.

Signed

Date: 24th November 2018

Deputy Upper Tribunal Judge Grimes